

TITLE 27A FINANCIAL GUARANTEES

UPDATED: October 26, 2012

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27A.10 GENERAL

Sections:

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27A.10.005 Title established. There is hereby created a new title in the King County Code entitled Financial Guarantees. (Ord. 12020 § 1, 1995).

27A.10.010 Purpose. The purpose of this title is to establish authority and procedures for accepting and enforcing financial guarantees, with the intent of assuring that development projects are completed and maintained in accordance with county approval conditions. (Ord. 12020 § 2, 1995).

27A.10.020 Provisions. This chapter sets forth provisions general to the administration of financial guarantees and includes: applicability, default, financial guarantee conditions, financial guarantees-form and amount, performance guarantee reductions, release of financial guarantees, scheduling of performance, maintenance and defects inspections, financial guarantee waivers, and status of current financial guarantees. (Ord. 12020 § 9, 1995).

27A.10.030 Applicability. The provisions of this title shall apply to permits and approvals granted pursuant to Titles 9, 14, 16, 19, or 21A (or their successors) of the King County Code. (Ord. 12020 § 10, 1995).

27A.10.040 Rules. The department is authorized to adopt, pursuant to K.C.C. 2.98, such rules as are deemed appropriate to implement this title. The director may prepare and require the use of such forms as are deemed appropriate for its administration. (Ord. 12020 § 31, 1995).

27A.20 DEFINITIONS

Sections:

- 27A.20.010 Applicant.
- 27A.20.020 Default.
- 27A.20.030 Department.
- 27A.20.040 Director.
- 27A.20.050 Financial guarantee.
- 27A.20.060 Guarantor.

27A.20.010 Applicant. "Applicant" means the person or entity who is required to post the financial guarantee. (Ord. 12020 § 3, 1995).

27A.20.020 Default. "Default" means the failure to:

- A. comply with financial guarantee conditions;
- B. complete, in the specified time, the required improvements in accordance with the King County Code and with approved project plans and conditions; or
- C. maintain, for the specified period of time, the required improvements in accordance with the King County Code and with approved project plans and conditions. (Ord. 12020 § 4, 1995).

27A.20.030 Department. "Department" means the King County department of permitting and environmental review or its successor organization. (Ord. 17420 § 136, 2012; Ord. 12020 § 5, 1995).

27A.20.040 Director. "Director" means the director of the King County department of permitting and environmental review or his/her designee. (Ord. 17420 § 137, 2012; Ord. 12020 § 6, 1995).

27A.20.050 Financial guarantee. "Financial guarantee" means a form of financial security posted to ensure timely and proper completion of improvements, to ensure compliance with the King County Code, and/or to warranty materials, workmanship of improvements, and design. Financial guarantees include assignments of funds, cash deposits, surety bonds, and/or other forms of financial security acceptable to the director. For the purposes of this title, the terms performance guarantee, maintenance guarantee and defect guarantee are considered sub-categories of financial guarantee. (Ord. 12020 § 7, 1995).

27A.20.060 Guarantor. "Guarantor" means a bank or other acceptable entity which issues the financial guarantee. (Ord. 12020 § 8, 1995).

27A.30 ADMINISTRATION

Sections:

- 27A.30.010 Financial guarantee conditions.
- 27A.30.020 Financial guarantees-form and amount.
- 27A.30.030 Performance guarantee reductions.
- 27A.30.040 Release of financial guarantees.
- 27A.30.050 Scheduling of final performance, maintenance, and defect inspections.
- 27A.30.060 Financial guarantee waivers.
- 27A.30.070 Status of current financial guarantees.
- 27A.30.080 Performance guarantees authorized.
- 27A.30.090 Maintenance and defect guarantees authorized.
- 27A.30.100 Default.

27A.30.010 Financial guarantee conditions.

A. Every financial guarantee shall obligate the applicant to comply with all of the provisions of the King County Code and complete all conditions required by the permit or approval within the time limit specified.

B. The county may collect against the financial guarantee when work is not completed in a timely manner in accordance with conditions of the permit and/or approval granted pursuant to Titles 9, 14, 16, 19, or 21A (or their successors). It is in the director's sole reasonable discretion to determine whether the permit or approval conditions have been satisfied in a timely manner, and to determine whether the performance guarantee shall be collected to remedy the violation. The director shall notify the applicant in writing of any such determination. (Ord. 12020 § 12, 1995).

27A.30.020 Financial guarantees-form and amount. Financial guarantees shall be in a form approved by the director, in consultation with the department of natural resources and parks, department of transportation, the prosecuting attorney's office, and other affected agencies. The amounts of the financial guarantees shall be based on the

schedules appropriate to the required work which are updated on a periodic and frequent basis to ensure that the amount fully captures likely costs. Financial guarantees shall also require a contingency in an amount to be determined by the director. (Ord. 14199 § 249, 2001: Ord. 12020 § 13, 1995).

27A.30.030 Performance guarantee reductions. The director may allow up to two reductions in performance guarantee amounts that total no more than seventy percent of the initial guarantee value, including contingencies, in accordance with the county's cost estimate of the work remaining to be completed. No more than two reductions will be allowed. The total performance guarantee amount shall not be less than the department's estimate of the actual cost to complete the remaining work. The request for reduction shall be in writing, accompanied by a schedule for completion of remaining work. (Ord. 17191 § 58, 2011: Ord. 12020 § 14, 1995).

27A.30.040 Release of financial guarantees. The department shall not release performance guarantees until all permit fees have been paid to date; maintenance guarantees and defect guarantees have been posted, if applicable; inspection of the development site has been performed; and the director has determined that the conditions and requirements of the permit/approval otherwise specified in the financial guarantee have been met and granted final construction approval if applicable. (Ord. 12020 § 15, 1995).

27A.30.050 Scheduling of final performance, maintenance, and defect inspections. The department shall be responsible for scheduling final performance, and maintenance and defects inspections. The department should schedule such inspections approximately forty-five days prior to expiration of the performance or maintenance period. If necessary to determine completion of performance, additional inspections should also be made after the expiration of the performance period. Periodic inspections may also be made at the discretion of the director of the department of permitting and environmental review, the director of the department of natural resources and parks or the director of the department of transportation. (Ord. 17420 § 138, 2012: Ord. 17420 § 138, 2012: Ord. 14199 § 250, 2001: Ord. 12020 § 16, 1995).

27A.30.060 Financial guarantee waivers. Consistent with chapter 36.32 RCW, King County shall not require any state agency, unit of local government, or gas company or electrical company (as those terms are defined in RCW 80.04.010) to secure the performance of a permit requirement with a financial guarantee as a condition of issuing a permit or approval for a building construction project. The director, however, may require such state agency or unit of local government, gas company or electric company to sign an agreement to complete required improvements and protect the County's rights and duty to remedy unsatisfactory performance. (Ord. 12020 § 17, 1995).

27A.30.070 Status of current financial guarantees. All financial guarantees required by the department and posted by the applicant prior to November 26, 1995, shall continue to be in force until released by the director following satisfactory compliance with financial guarantee conditions. (Ord. 12020 § 18, 1995).

27A.30.080 Performance guarantees authorized.

A. The department is authorized to require all applicants constructing improvements pursuant to any permits and approvals granted pursuant to Titles 9, 14, 16, 19, or 21A (or their successors) of the King County Code to post performance guarantees with the director to guarantee completion of required improvements and compliance with the King County Code.

B. If more than one such guarantee is required, the applicant may, with the permission of the director, and to the extent allowable by law, combine guarantees; provided, that at no time shall the guaranteed amount be less than the total amount which would have been required in the form of separate financial guarantees; and provided further, that such guarantee shall on its face clearly delineate those separate additional financial guarantees which it is intended in lieu of.

C. Unless otherwise specifically indicated in the King County Code, performance guarantees shall require actual construction and installation of required improvements within two years after recording for final subdivision, two years after recording for short subdivision, one year after right-of-way permit issuance or six months after temporary building occupancy issued for a building permit. The time limit for performance guarantee compliance may be extended by six months at the director's discretion, if circumstances beyond the control of the applicant warrant an extension. The request for an extension shall be in writing, accompanied by a schedule for completion of remaining work. (Ord. 12020 § 19, 1995).

27A.30.090 Maintenance and defect guarantees authorized.

A. The department is authorized to require all applicants to post a maintenance guarantee and/or defect guarantee warranting the successful operation and maintenance of improvements, and guaranteeing the workmanship, materials, and design used in construction of improvements required by the conditions of any permits or approvals issued pursuant to titles 9, 14, 16, 19, or 21A; (or their successors) and assuring compliance with the King County Code.

B. Unless otherwise specifically indicated in the King County Code, all maintenance guarantees and defect guarantees shall guarantee successful operation, workmanship, materials, and design of required facilities for a period of two years following final inspection and approval of improvements.

C. Inspections of facilities required pursuant to Titles 9, 14, 16, 19, or 21A (or their successors) should be scheduled by the appropriate department approximately forty-five days prior to the end of the two year maintenance and/or defect period. (Ord. 12020 § 20, 1995).

27A.30.100 Default.

A. Determination of default shall be made by the department after an inspection has indicated that improvements need to be corrected or completed. In the event of failure to comply with any of the conditions and terms of the permits and/or approvals covered by this title, the director shall notify the applicant and guarantor in writing of the default. If satisfactory assurance is not received by the department within a time period determined by the director, that conditions will be appropriately corrected, the department may:

1. order the applicant to perform all necessary corrective work, and/or
2. demand payment on the financial guarantee(s). Nothing in this title shall limit the ability of King County to enforce or otherwise compel compliance with conditions of any county permit or approval in accordance with any enforcement provision set forth in Title 23 of the King County Code.

B. The guarantor shall be responsible, up to the limits of the financial guarantee, for the payment of any and all necessary costs and expenses that have been or will be incurred or expended by King County in causing any and all such required work to be done. In the event that total costs associated with the required work exceed the guarantee amount, the applicant shall remain responsible to King County for the payment of any remaining amount.

C. In the event of default, King County may contract with a third party to complete work required pursuant to this title. (Ord. 12020 § 11, 1995).

27A.40 REQUIREMENTS

Sections:

- 27A.40.010 General.
- 27A.40.020 Drainage improvements.
- 27A.40.030 Restoration and reclamation activities.
- 27A.40.040 Rights-of-way.
- 27A.40.050 Site development and restoration.
- 27A.40.060 Subdivisions.
- 27A.40.070 Landscaping.
- 27A.40.080 Sensitive areas.

27A.40.090 Section 309 financial guarantees.

27A.40.100 Moved and temporary buildings.

27A.40.010 General. The following provisions set forth special financial guarantee requirements for certain improvements required pursuant to Titles 9, 14, 16, 19 or 21A (or their successors) of the King County Code. (Ord. 12020 § 21, 1995).

27A.40.020 Drainage improvements. Financial guarantees for drainage improvements pursuant to K.C.C. Title 9 shall be sufficient to cover the time and cost of any:

- A. Monitoring required by approved plans and conditions;
- B. Department review of monitoring results and reports; and
- C. Corrective work on or off the project site which is necessary to provide drainage control consistent with approved plans and conditions, stabilize and restore disturbed areas and remove sources of any hazard associated with work which is in progress but is not completed. (Ord. 13189 § 8, 1998; Ord. 12020 § 22, 1995).

27A.40.030 Restoration and reclamation activities.

A. Financial guarantees for restoration and reclamation activities required pursuant to Title 16 and Title 21A shall be sufficient to cover the cost of conformance with conditions of the permit, including corrective work necessary to provide drainage consistent with approved plans and conditions, to remove geologic hazards, and to protect water quality and the public health, safety, and welfare. The financial guarantee may be reduced proportionately for phased projects as work is complete and subsequent reclamation and/or restoration on each phase is completed. The request for reduction shall be in writing.

B. Financial guarantees may be waived on:

- 1. Projects of less than one thousand cubic yards,
- 2. King County department projects, and
- 3. Reclamation projects with financial guarantees posted with the state of Washington Department of Natural Resources or with the federal office of surface mining.

C. A cash guarantee shall accompany the operating permit and may be used after proper notice at the discretion of the director to correct deficiencies affecting public health, safety and welfare, including effects on water quality. The amount of the cash guarantee shall be determined by the director, and shall be maintained at the full value established by the director at all times during the life of the permit. (Ord. 12020 § 23, 1995).

27A.40.040 Rights-of-way. Financial guarantees for any right-of way improvement required pursuant to Title 14 shall be sufficient to cover the cost of restoring the right-of-way to original condition or complying with conditions of any permit or approval, including corrective work necessary to provide drainage consistent with approved plans and conditions, and to protect the public health, safety and welfare. (Ord. 12020 § 24, 1995).

27A.40.050 Site development and restoration.

A. Financial guarantees for any improvement required pursuant to Titles 16, 19, or 21A (or their successors) shall be sufficient to cover the cost of complying with conditions of the permit or approval, including corrective work necessary to provide drainage consistent with approved plans and conditions, to remove geologic hazards, and to protect water quality and the public health, safety, and welfare. Such financial guarantees shall include site restoration and stabilization requirements.

B. No temporary certificate of occupancy shall be issued until:

- 1. Drainage facility improvements are functional;
- 2. Required parking is provided; and
- 3. Safe access is provided.

C. The director may allow a performance guarantee to be posted for some or all of the improvements required by subsection B of this section if no life safety hazard exists. The request shall be made in writing, accompanied by a schedule for completion of required improvements. (Ord. 12020 § 25, 1995).

27A.40.060 Subdivisions.

A. Pursuant to RCW 58.17.130, an applicant may request recording of a subdivision prior to the completion of the construction of required improvements subject to the posting of a performance financial guarantee. Performance guarantees for subdivisions which record prior to completing all improvements shall be subject to the following requirements:

1. A performance guarantee shall be posted with the department in an amount equal to the director's estimate for such improvements as assurance that the applicant will, within two years from the date of recording of the final subdivision, complete the improvements in accordance with the requirements and to the satisfaction of the development engineer (as defined in Title 19 or its successor);

2. Requests for performance guarantees shall be in writing, shall be correlated with the original terms and conditions of preliminary approval, and shall be accompanied by a detailed schedule for completion of the improvements and conditions,

3. Performance guarantees for improvements required pursuant to Title 19 (or its successor) shall be sufficient to cover the cost of conformance with conditions of the preliminary approval and approved construction plans, including corrective work necessary to protect the public health, safety, and welfare.

4. Maintenance guarantees and defect guarantee shall be posted with the director:

a. prior to final construction approval and recording of the final plat when the applicant has constructed improvements in accordance with the approval of the director and the development engineer, or

b. prior to final construction approval and the release of performance guarantees when the applicant has previously recorded the plat.

5. Maintenance guarantees and defect guarantees shall be released following a final maintenance and defect inspection and, if applicable, acceptance of the facilities for county maintenance. (Ord. 12020 § 26, 1995).

27A.40.070 Landscaping.

A. Prior to receiving a temporary or permanent occupancy certificate for any building or structure for which Title 21A requires landscaping, an applicant shall provide the required performance guarantee to secure the completion and improvement of required landscaping, in accordance with approved site plan, within three months following issuance of the temporary occupancy certificate.

B. Performance guarantees for landscaping required pursuant to K.C.C. 21A.16 shall be sufficient to cover the cost of conformance with conditions of the permit, and shall be required for a period of two years after the planting or transplanting of vegetation to insure proper installation, establishment and maintenance. This time period may be extended by one year by the director, if necessary to cover a planting and growing season.

C. The director may extend the time limit for compliance with the above landscaping requirement up to one year after issuance of the occupancy certificate if circumstances beyond the control of the applicant warrant an extension. The request for an extension shall be in writing, accompanied by a schedule for completion of remaining work. (Ord. 17191 § 59, 2011; Ord. 12020 § 27, 1995).

27A.40.080 Sensitive areas.

A. Financial guarantees for mitigation required pursuant to K.C.C. chapter 21A.24 shall be sufficient to guarantee that all required mitigation measures will be completed no later than the time established by King County in accordance with K.C.C. chapter 21A.24.

B. Performance and maintenance guarantees shall also be required for restoration of a sensitive area or buffer not performed as part of a mitigation or maintenance plan except that no financial guarantee shall be required for minor stream restoration carried out pursuant to K.C.C. chapter 21A.24.

C. For maintenance guarantees associated with mitigation, corrective work, restoration or enhancement, the financial guarantee shall be sufficient to cover the time and cost to guarantee satisfactory workmanship, materials and performance of structures and improvements required by K.C.C. chapter 21A.24 and any monitoring of those structures and improvements required by approved plans and conditions.

D. Public development proposals shall be relieved from having to comply with the provisions of this section if public funds have previously been committed for mitigation, maintenance, monitoring or restoration. (Ord. 13189 § 9, 1998: Ord. 12020 § 28, 1995).

27A.40.090 Section 309 financial guarantees. Financial guarantees required pursuant to Section 309 of the King County modifications to the current Uniform Building Code shall be in the form of cash deposited with the director, assignment of funds approved by the director, or in an irrevocable escrow in an amount sufficient to restore the building and site, and to perform corrective work required by Title 16 of the King County Code. (Ord. 12020 § 29, 1995).

27A.40.100 Moved and temporary buildings. Financial guarantees required with respect to moved or temporary buildings pursuant to Section 104 (e) of the King County modifications to the current Uniform Building Code shall be in the form of cash deposited with the director, assignment of funds approved by the director, or in an approved irrevocable escrow in a sufficient amount to be determined by the director. (Ord. 12020 § 30, 1995).